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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES LYNN O'HINES,
12 CDCR #K-86989,
13 ADC #197067,

Plaintiff,

14
15 vs.

16 TOERS-BIJNS Deputy Warden, et al.,
17

18 Defendants.
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Civil No. 08-1088 LAB (AJB)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY FILING FEE
REQUIRED BY 28 U.S.C. § 1914(a)
AND/OR FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

20 Plaintiff, an inmate currently incarcerated at the Arizona State Prison Complex in
21 Florence, Arizona, and proceeding pro se, has filed a Complaint pursuant to the Federal Tort
22 Claims Act.

23 **I.**

24 **Failure to Pay Filing Fee or Request IFP Status**

25 All parties instituting any civil action, suit or proceeding in a district court of the United
26 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
27 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only if
28 the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).

1 See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d
2 1176, 1177 (9th Cir. 1999).

3 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence a civil action,
4 nor has submitted a Motion to Proceed IFP. Therefore, this case is subject to immediate
5 dismissal pursuant to 28 U.S.C. § 1914(a).

6 **III.**

7 **Conclusion and Order**

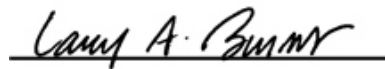
8 For the reasons set forth above, the Court hereby:

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
10 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

11 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is “Filed”
12 to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to proceed
13 IFP which includes a certified copy of his trust account statement for the 6-month period
14 preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR
15 3.2(b).

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
17 Court’s approved form “Motion and Declaration in Support of Motion to Proceed *In Forma*
18 *Pauperis*.” If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
19 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
20 prejudice and without further Order of the Court.

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22 DATED: June 29, 2008

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24 **HONORABLE LARRY ALAN BURNS**
25 United States District Judge
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